

REMARKS

The present application includes pending claims 1-23 and 25-35. These claims stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 2003/0018745 (“McGowan”) in view of U.S. 2003/0221191 (“Khusheim”) and U.S. 6,029,195 (“Herz”). The Applicants respectfully traverse these rejections for at least the reasons previously discussed during prosecution and the following.

Claim 1 recites, in part, “receiving, **at a user-designated monitoring system** via a communication network, at least one notification of a **user** request for consumption of media, each of the at least one notification comprising **user**-selected parameter information related to the request and at least one **user**-defined parameter that indicates a type of allowable use of the at least one notification by the monitoring system; ... **automatically selecting** additional media for consumption by the user according to the at least one statistic; scheduling the selected additional media according to the at least one statistic, for consumption by the user via the communication network; and updating a user interface with the scheduled selected additional media.”

The Applicants respectfully submit that McGowan is silent with regard to a user having any control over with whom activity information is shared, or the allowable use of activity information by the recipient, as claimed. The Office Action seemingly acknowledges this, as well. See June 17, 2009 Office Action at page 4 (“McGowan does not explicitly state the user designing [sic] which monitoring system receives the

notification along with user selected parameter information which further indicates a type of allowable user at the monitoring system”).

In an attempt to overcome this deficiency of McGowan, the Office Action indicates that “Khusheim teaches a monitoring system (Fig. 1 item 130) controlling the selecting and scheduling of additional media according to calculated statistics from received user information....” *See id.* at page 4 (emphasis in original).

Notably, the Office Action does not indicate that a **user** designates the “control center 130” [which the Office Action cites as a monitoring system] of Khusheim. While Khusheim notes that “[c]ommunication mechanism 122 may be used for establishing a communication link between CPE 106 and a control center, or central location, 130...,” there is nothing in Khusheim that indicates that a user designates the control center 130, in general, or a user requesting consumption of media, etc. also designates the monitoring system, in particular. Further, the Office Action has not shown or asserted that Herz describes, teaches or suggests at least this aspect of claim 1. Therefore, the Office Action has not shown where the combination of the cited references describes, teaches or suggests all of “receiving, **at a user-designated monitoring system** via a communication network, at least one notification of a user request for consumption of media, each of the at least one notification comprising user-selected parameter information related to the request and at least one user-defined parameter that indicates a type of allowable use of the at least one notification by the monitoring system,” as recited in claim 1, for example. Independent claim 9 recites similar

limitations. Thus, for at least these reasons, the Applicants respectfully request reconsideration of the rejection of claims 1-16.

Claim 1 also recites, in part, “**automatically selecting** additional media for consumption by the user according to the at least one statistic;....” The Office Action relies on McGowan as disclosing this limitation. *See* June 17, 2009 Office Action at page 4. The Applicants respectfully submit that McGowan does not describe, teach or suggest the automatic selection of media.

Instead, McGowan states “[t]he VCS operator, content provider, cable system, advertisers, or other key business partners are the entities that decide what a channel should be and how many channels there should be.” *See* McGowan at [0032]. Thus, McGowan teaches that it is the “VCS operator, content provider, cable system, advertisers, or other key business partners” that determine what a channel should be. McGowan further states, “**the new content provider may assemble** representative programming for this channel, provide the content to a VCS operator,....” *See id.* (emphasis added). McGowan also states that a “**drag-and-drop methodology** may conveniently enable lists of candidate programs to be generated and then **individual programs selected for a given channel.**” *See id.* at [0032] (emphasis added) and [0035] (“secondary content is performing **using the same interactive drag-and-drop software tool**”).

Clearly, the use of a “drag and drop methodology”, which is employed by a human operator, is by no means “automatic selection,” as claimed.

McGowan also states “[t]he VCS additionally provides **assistance** in the selection process using artificial intelligence (AI) rules and **recommendations**.” *See id.* at [0033] (emphasis added) The Applicants respectfully submit that “assistance” and “recommendations” effectively teach away from “automatic selection,” as claimed.

McGowan further states, “[w]ell-known clustering algorithms, including fuzzy clustering techniques, and pattern recognition routines are implemented to isolate key trends and findings. This data is converted into **rules** that **assist** or simply **offer recommendation** in the selection of content for each channel.” *See id.* (emphasis added). Indeed, McGowan seems to summarize the capabilities of the “VCS” in this regard, stating, “[t]he AI interface additionally functions to **suggest, but not control the process of content selection.**” *See id.* As shown above, McGowan effectively teaches away from “automatic selection” of media, as recited, for example, in claim 1.

Nevertheless, the Office Action notes the following:

McGowan explicitly states a software program automatically selecting programs to be suggested for use in scheduling where a **user via user interface** may then **automatically fill in** the scheduling with selected **suggested** programs ([0034]-[0035]).

See June 17, 2009 Office Action at page 2 (emphasis added). Initially, the statement above seems to contradict itself, due to the fact that **if** McGowan did disclose “automatic selection,” there would be no need for a “user” to interact with the system via the user interface to “fill in” scheduling with “suggested programs.” Indeed, the statement above clearly evinces human interaction with the selection process, in stark contrast to “automatic” selection.

Next, as noted above, the Office Action relies on McGowan at [0034]-[0035] as disclosing automatic selection. However, McGowan indicates that the “**user** interface will enable programs to be scheduled in a variety of patterns....” See McGowan at [0034] (emphasis added). “A **single action** could enable an entire collection of cooking programs....” See *id.* (emphasis added). Again, McGowan is clearly indicating human interaction with respect to selection. Indeed, “selection of content **specifically requires** that a channel be **specified** in terms of primary content, however, secondary content may also be selected.” See *id.* at [0035] (emphasis added). Notably, the “selection and scheduling of secondary content is performed **using the same interactive drag-and-drop software tool.**” See *id.* at [0035] (emphasis added). As explained above, an “interactive drag-and-drop software tool” necessarily requires human interaction, thereby teaching away from “automatic selection.”

As explained above, contrary to the assertion in the Office Action, McGowan does not describe, teach or suggest “**automatically selecting** additional media for consumption by the user according to the at least one statistic,” as recited, for example, in claim 1. Independent claims 9, 17 and 27 recite similar limitations. The Office Action has not shown that any of the other cited references cure this deficiency of McGowan. Thus, for at least these reasons, the Applicants respectfully request reconsideration of the rejection of claims 1, 9, 17, 27 and the claims that depend therefrom.

In general, the Office Action makes various statements regarding the pending claims and the cited references that are now moot in light of the above. Thus, the Applicants will not address such statements at the present time. However, the

Applicants expressly reserve the right to challenge such statements in the future should the need arise (*e.g.*, if such statement should become relevant by appearing in a rejection of any current or future claim).

The Applicants respectfully request reconsideration and allowance of claims 1-23 and 25-35 for at least the reasons discussed above. If the Examiner has any questions or the Applicants can be of any assistance, the Examiner is invited to contact the undersigned attorney for Applicants.

The Commissioner is authorized to charge any necessary fees, or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Account No. 13-0017.

Respectfully submitted,

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